

Chapter 10

Poach, chuck, freeze and launder: South Africa's criminal justice response to environmental transnational abalone poaching syndicates 1

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Abstract

This chapter focuses on transnational organised crime in the context of corruption in Africa and the AU's priorities as reflected in the Agenda 2063 declaration. It discusses the challenges and constraints that confront the South African criminal justice authorities in coming to grips with the transnational organised crime (TOC) industry that has grown out of the poaching of abalone along most of the South African shoreline. Abalone poaching is covered under treaty-based conventions regulating economic crimes, all of which South Africa has ratified and incorporated into national law, despite which the issue is largely ignored in the legal literature. This chapter specifically examines the shift from regarding illegal abalone poaching as a sustainable wildlife management problem towards viewing it as an environmental economic crime perpetrated by organised international criminal syndicates in South Africa and the Far East. It investigates the potential effects of the environmental economy crime paradigm, identifying the reasons for its emergence and outlining the legal challenges and opportunities that it presents in capacity-building and awareness-raising efforts in criminal law enforcement. It highlights the lack of co-operation between the criminal justice authorities and other governmental agencies responsible for fisheries and environmental conservation and sustenance. The main perspectives of this chapter is to raise awareness of the nature of transnational organised crimes and their socioeconomic consequences on a regional, national and international level, focusing specifically on the African challenges.

Keywords

Anti-corruption; Abalone (*Haliotis midae*) poaching; Environmental sustainability; Law enforcement; Money laundering; Resource efficiency; Prosecution of organised crime; Sustainable wildlife management.

10.1 Introduction

Transnational organised crime has no uniform international definition. Its definition varies from state to state and from one regional body to another.

The collapse of Apartheid in South Africa in the early 1990s resulted in the lifting of economic sanctions and the opening of the country's borders and economy to ease the movement of people and goods in and out of the country. Foreign organised crime groups, mainly from Russia, Ukraine, Nigeria and the Far East, wasted no time moving into the country, establishing a foothold and hooking up with local criminal gangs (CSD final report 2010; Chen & Lovell 2013: 23). The timing was perfect, for, in the first four years of the transition, government departments were preoccupied with shedding their Apartheid-era image and transforming themselves into user-friendly public service agencies. Having inherited a criminal justice system which was widely vilified under Apartheid, the new political leadership in the criminal justice cluster, comprising police, courts and prisons, was hell-bent on making the administration of criminal justice humane, participatory, and user- and victim-orientated. Organised crime, then, was not an issue to be taken seriously, still less so for the

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ordinary person, who associated it “with the stereotype hoodlum who wears sunglasses, has tattoos and uses violence” (Gastrow 2013: 3).

Nevertheless, it is linked to other economic crimes, such as money laundering, which play havoc with both the national and international economy, affecting the lives of ordinary people. Although both the National Crime Prevention Strategy (1995) and the White Paper on Safety and Security (1998) pointed to the problem of transnational crime, particularly the threat posed by the presence of international and regional criminal syndicates, the actual method of combating organised crime was poorly conceived and hamstrung by poor coordination among law enforcement agencies and inadequate funding from the central government. Organised criminal groupings exploited these drawbacks to entrench themselves even further, increasing their geographic reach and the range of their criminal stock in trade (Chen and Lovell 2014: 13).

This chapter examines how the South African criminal justice authorities have come to grips with the transnational organised crime industry that has grown out of the poaching of abalone along most of the South African shoreline. Although abalone poaching is covered under treaty-based conventions regulating economic crimes, all of which South Africa has ratified and incorporated into national law, it is an issue which barely attracts the attention of criminal law writers. Most of the literature on this topic has been written by scholars from other disciplines. Yet the literature concludes, universally, that abalone poaching, like the illegal harvesting of all wildlife, ravages the economy and the country’s natural resources, not to mention the horrendous social problems it creates in the affected communities (Chen and Lovell 2014: 25).

This study is built on the analysis of secondary sources of data. These comprise a literature review of relevant legislative policies; statistical reports; reports by governmental, intergovernmental and non-governmental organisations; records of contemporary research in the field of crime in the global maritime sector, and other studies conducted by researchers at academic institutions. In particular, it draws on expert studies in the field of maritime crime, and aims to serve as a baseline to inspire future research in this particular field. Hence this chapter is an exploratory one which highlights the challenges, policies, protocols and criminal activities that exist within the multibillion-dollar maritime sector, opening up opportunities for new perspectives on maritime crime in the southern tip of Africa.

The chapter first reviews the current literature about the TOC and gives background to the study, focusing on the methodological difficulties and possible solutions. It goes on to analyse South Africa’s criminal justice system in the context of the plunder of abalone, the roles of the various actors in the illicit trade, arrests and the criminal process, the abalone court, the consequences of the abolition of environmental courts, the lack of reliable criminal justice statistics, apathy and poor coordination among the responsible government departments, and how the criminal justice system presently deals with abalone poaching as a transnational organised crime. Finally, the conclusions discuss what actions are necessary to address the problem more effectively.

10.2 Understanding and conceptualising transnational crime

The concept of transnational organised crime (TOC) has various definitions. The term “transnational”, borrowed from the field of international relations, and describes the movement of information, money, people, physical objects and other tangible or intangible assets across national borders (Khuan & Singh 2014: 2). It evokes a set of unidentified forces which constitute an unclear system of relations, lacking coordination with each other, managed by people who do not conform to state authority. The concept of TOC has, since the beginning of the 1990s, become part of the vocabulary used by both specialists and lay people as a standard reference for complex forms of crime amongst groups of individuals across national borders or those engaged in illicit activities and markets at an international level (Massari 2014: 1).

From a criminological perspective, the concept “transnational crime” originated in the mid-1970s when the United Nations used the term to identify certain criminal activities which transcend national jurisdictions. In 1995, the UN identified eighteen categories of transnational—and mostly organised—criminality. Transnational crime was then defined as “offences whose inception, prevention and/or direct or indirect effects involved more than one country” (UN Doc. A.CONF. 169/15/Add.1: 1995).

The crimes listed included: sea piracy, illicit drug trafficking, money laundering, terrorist activities, theft of art and cultural objects, theft of intellectual property, illicit arms trafficking, aircraft hijacking, insurance fraud, computer crime, environmental crime, people trafficking, trade in human body parts, fraudulent bankruptcy, infiltration of legal business, and corruption and bribery of public or party officials. Transnational crime has increased dramatically with the era of globalisation; it is only recently that some progress has been made by states and international organisations in developing measures to combat this type of criminality (The Peace Palace Library 2014: 534).

Transnational organised crime crosses borders, challenge states, exploits individuals, pursues non-conventional economic interests, destroys economies and civil society, and eventually weakens the global democratic system. The UN Secretary-General’s High-level Panel on Threats, Challenges and Change

maintained that transnational organised crime was one of six key global security challenges (United Nations 2004: 23).

Sea travel is known to be the lifeblood of many nation states in terms of their respective economies. Nations that trade get rich—and the more they trade, the richer they get. Out of the 54 countries of Africa, 39 are either littoral states or islands; therefore, it is expected that the continent and its inhabitants should be aware of the importance of the maritime domain in sustain their economies (Brenthurst Foundation 2010:3).

Several scholars have attempted to advance a more precise definition of illicit maritime economic activity, focusing on both the characteristics of criminal actors and their activities. Specifically, this area of criminal activity can be characterised firstly by the perpetrators' economic aims and objectives, and secondly by the formal organizational structures within which the various stakeholders operate and which facilitate the use or manipulation of their own business "instruments" for economic gains (Khan & Singh 2014: 3).

Transnational organised crime's existence is also premised on the resources used by criminal groups to facilitate their various illegal activities, from using the instruments of large companies and multinationals to impose their economic hegemony to evading the legal rules of economic engagement via the corruption of law enforcement and civil service authorities. The negative impacts of TOC cartels, which have reached macro-economic proportions, are known to vary in different parts of the globe, but they place developing countries at a particular disadvantage in light of the threats they represent to already weak economic growth and the pressure they put on national welfare systems (Massari 2014: 1).

The UN National Security Council (2011: 1) provides a more explicit understanding of TOC. It refers to the self-perpetuating associations of individuals who operate transnationally for the purpose of obtaining power, influence and monetary and/or commercial gain, wholly or in part by illegal means, while protecting their activities through a pattern of corruption and/ or violence, or while protecting their illegal activities through a transnational organisational structure and the exploitation of transnational commerce or communication mechanisms. It asserts that there is no single structure under which transnational organised criminals operate, since they vary from hierarchies to clans, networks and cells, and may evolve into other structures (Khan & Singh 2014: 4).

Like the organisational culture of legitimate corporations, TOC is not characterised by inertia. It adapts as new opportunities emerge and as relationships between criminal networks solidify; it expands its networks around the world and has developed a sophisticated *modus operandi* that makes the implementation of transnational criminal law and justice difficult to pursue. Factors such as digitisation, increasing technological sophistication, improvements in global communication systems, and the shrinking of the global political economy across borders have changed the way TOCs are perpetrated. As a consequence, TOC syndicates are well established in many countries around the world, irrespective of their levels of development. To this extent, the World Bank's World Development Report 2011 expresses great concern about the impact of TOC on economic development. Given the fluid and diversified nature that allows it to engage in a host of illicit activities, including drug and human trafficking, piracy and counterfeiting, it is the weaker states that are more vulnerable to TOC predation, although stronger and conflict-affected states are not precluded (World Bank 2011: 2; Khan & Singh 2014: 7).

10.3 Illicit Abalone Poaching in South Africa

South Africa, being a maritime country, has a very important fishing industry. The industry employs about 27,000 people and produces fish with a total wholesale value of over R1 billion. South African waters host around 16% of the total marine fish species in the world, most of which have at some time or other been over-exploited (Fuggle & Rabie 1999: 318-325; Chen and Lovell 2014: 32).

The commercial abalone industry in South Africa originated in 1949. The most sought-after abalone species is the one known as *Haliotis midae*. South Africa has one of the oldest commercial abalone fisheries in the world (Tarr 1992: 438-447; Chen and Lovell 2014: 49). South Africa ranks as one of the top five to ten wild abalone fisheries in the world, behind those of Australia and Japan.

The South African fishery industry remained relatively stable between 1972 and 1995, with abalone catches totalling between 600 and 660 tons annually. This was the case until 1996, when initial distributions of only 400 tons, later adjusting to 550 tons, were caught for that season. A result of over-exploitation, biological uncertainty and political pressure, this dramatic cut indicated the seriousness of the problem (Tarr, Williams & MacKenzie 1997: 319; Hauck 1997: 285; Chen and Lovell 2014: 105). Steinberg pointed out that the

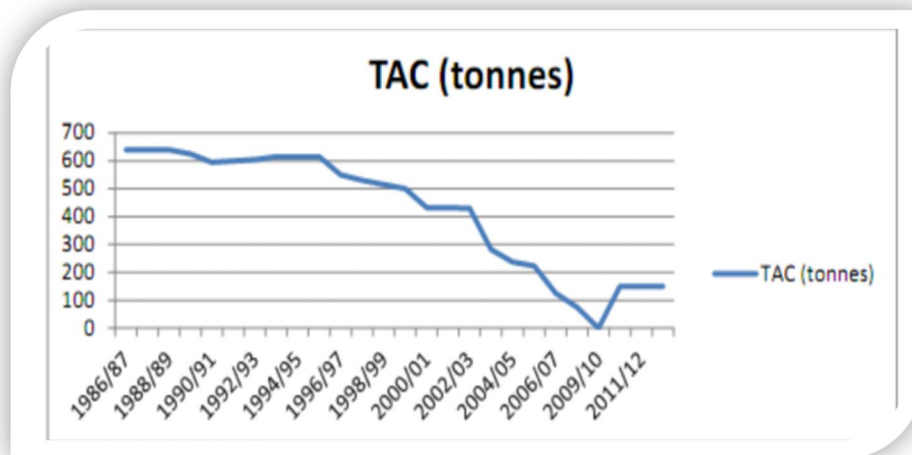
transformation process that began shortly afterwards proved cumbersome, constrained by economic and environmental objectives and hamstrung by a lack of capacity in the national fisheries authority. As a consequence, the expectations of many formerly disadvantaged fishers were not met, leaving a void for criminal groups to exploit. (2005: page number)

Chinese organised crime groups, known as Triads, with their international networks, are key to the continuing profitability of marine poaching. They provide access to markets with an unsaturated demand for abalone, and provide financial support and development to ensure the success of illegal operations. They treat and pay their suppliers well, to ensure a constant supply of the product their customers demand. However, due to the secretive nature of these syndicates and the precision with which they work, law enforcement officers find it difficult to intervene in their operations (UNODC 2011b). Whenever the law enforcement officers raid an illegal abalone storage facility, or when people are caught transporting abalone illegally, the media report about this in a dramatic way. But very little, if anything, is said in the press about the outcomes of such cases.

According to Burgener (2013:7)

[a] conservative estimate of 1,723 tons of [the] abalone species ... *Haliotis midae* was poached in South Africa in 2012, more than 10 times the official Total Allowable Catch (TAC). In the last 10 years, it is estimated that more than 20,500 tons have been poached and illegally traded in total. Virtually all of this will have travelled to Hong Kong, the epicentre of the global abalone trade, before either being sold locally or re-exported.

Figure 10.1: Annual Total Allowable Catch (TAC) for Abalone

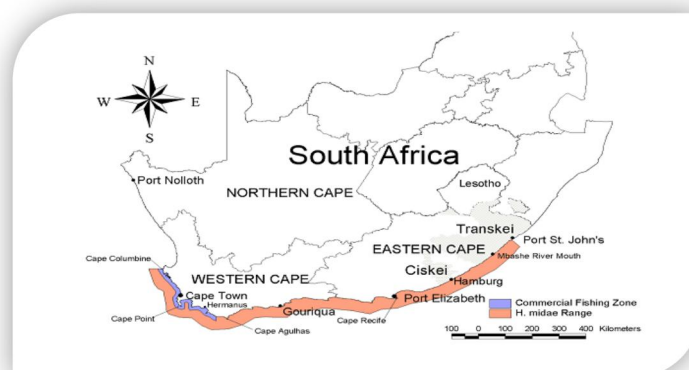


Source: Status of the South African Marine Fishery Resources (2014: 5).

10.4 Abalone (*Haliotis midae*) and Environmental Crime

Abalone (from the Spanish *Abulon*), locally known in South Africa as *perlemoen*, from the Dutch word “paarlemoer” meaning mother-of-pearl, is an edible marine mollusc that inhabits the subtidal zone of the ocean. *Haliotis midae* is the largest abalone species in South Africa and has a shell length of about 230 mm. It is slow growing, maturing after seven to nine years, and can live up to thirty years (Steinberg 2005: 3). Abalone occurs in the shallow waters along approximately two-thirds of the South African shoreline, stretching from Cape Columbine on the west coast to the Wild Coast region of the Eastern Cape.

Figure 10.2: A map of South Africa showing the distribution of *H. midae* and commercial fishing zones



Source: Madikiza (2014: 15)

While very little of it is eaten in South Africa, where it is considered too bland and chewy, abalone is a highly-prized delicacy in the Far East, especially in China where its dried meat is pounded into a powder which is sold as an aphrodisiac and as cherished as a wedding gift. Abalone was also a centrepiece of the grand cuisine that made up the courtly tradition of Imperial China and is today keenly consumed as a status-symbol delicacy among the burgeoning, well-heeled Chinese middle class. This, in turn, has increased the demand for abalone, raising its price very steeply for its end consumers in mainland China, Hong Kong, Taiwan, South Korea, Singapore and Japan (where it is often eaten uncooked as sashimi) (Lambrechts & Goga 2016: 13). The illicit trade in abalone, or “white gold” as it is called in the Far East, has thus become a highly lucrative business.

10.5 The abalone plunderers

In the 1990s, the Chinese Triads who had infiltrated South Africa’s main urban areas were known to dominate the illicit trade in abalone. They took advantage of the scrapping of Apartheid and China’s opening to the West to enter South Africa and establish themselves in the country’s main urban centres, blending in with the local Chinese communities that have lived in South Africa since the late 19th century (Chen & Lovell 2013: 95). Many entered (and still enter) the country illegally through the poorly policed borders with other states. With China having become South Africa’s largest trade partner, tens of thousands of Chinese have immigrated to South Africa, which now has the largest Chinese population in Africa. With the opening of trade links between the two countries in the 1990s, many Chinese entered South Africa as entrepreneurs, establishing up import/export firms, wholesalers, textiles and electronics shops, nightclubs and restaurants, or else they came as employees of Taiwanese enterprises (Chen & Lovell 2013: 30). Given the current brisk trade with China, there is a constant flow of Chinese people entering and leaving the country, which makes it easier for criminal groups to blend unnoticed into the flow of legal border crossings. In many instances, potential criminals take advantage of a legal entry into South Africa to conduct what von Lampe (2012: 5) calls “criminal foraging”, meaning to explore opportunities and seek out “alternative routes and transshipment methods” with the aim of broadening crime opportunities.

The South African police have been aware, since the 1980s, that Chinese criminal groups and Triads were involved in criminal activities, most notably the large-scale shipment of dried shark fin to the Far East. This was not unlawful, as long as the sharks were caught outside South Africa’s territorial waters. But because of poor coastal patrols, it was difficult to prove claims that the shark fins originated outside the territorial waters. It was only in the early 1990s that the police discovered that the Triads were also heavily involved in the illicit abalone trade, with at least 30 to 40 tons of dried abalone exported illegally in 1993. The National Prosecuting Authority acknowledged in 2003 that Chinese Triads were flooding the local market with narcotics, exchanging mandrax for the pillaged abalone (Chen & Lovell 2014: 35).

In the first half of the last century, there were no limits on who could harvest abalone or how much could be harvested. Abalone was fished mainly for food and for sale locally (Hauck 1997: 5). From the 1960s onwards, the Government started regulating abalone harvesting, restricting the total allowable catch (Hauck 1997: 10). These curbs were imposed largely because impoverished coastal communities and subsistence fishers, economically marginalised by the Apartheid government and left to fend for themselves, had over-exploited the abalone resource in order to make a living. With the advent of democracy, the new post-Apartheid government reallocated quotas to some subsistence fishermen, excluding the majority of previously-deprived fishermen who had resorted to over-exploitation of abalone (Hauck 2009a: 21).

10.6 The actors and their role in the illicit abalone trade

Various actors play a part in the poaching chain. The abalone divers usually come from poor fishing communities along the coast. They vary from unemployed people aiming to make fast money to plundering teams of divers, fitted with all the paraphernalia to evade law enforcers (Raemaekers et al. 2011: 54). In the Western Cape poaching occurs throughout the year, regardless of season, and usually under cover of night (Brill 2012: 31). In the East London area, poachers prefer taking to the waters on moonlit summer nights when the tide is low, the rocks exposed and the abalone visible (Nini 2013: 57). The poached abalone is kept in fridges at home for two or three days before it is sold for cash to middlemen or traffickers in the village or from outside (Nini 2013: 58). The traffickers, the second link in the chain, transport the abalone across the country, mainly to the buyers in Gauteng, who are responsible for transporting it across the borders to the wholesalers overseas (Warchol et al. 2003: 179). Low-income commercial fishers make up the other group of poachers. They extract more abalone than their total allowable catch and sell the whole batch to traffickers.

The most sophisticated poachers operate in teams of between 40 and 60 divers (Raemakers et al. 2014: 439), assisted by look-outs posted on the shore who alert the divers to the presence of patrolling marine police. Typically, a boat carrying a few divers makes a few dummy runs 12 kilometres offshore and then, on one such run, turns either left or right at a distance just far enough from the shore to shake off anyone on the coast keeping an eye on its movements (Hübschle 2010: 57). Once at the right spot, the divers descend into the water

and either bring up their catch straight away or swim underwater to the shore, hide their catch where they can pick it up later, and then swim back to the boat, thus avoiding being caught with the illegal harvest when they return (Hübschle 2010: 57; Warchol et al. 2003:19). The divers later collect the hidden abalone, which is passed on to traffickers who transport it to their homes or workplace where it is shucked (eviscerated), dressed with preservatives, then dried, canned (if fresh) or vacuum sealed, and packed for transport (Hübschle 2010: 56).

Mostly trucks, but occasionally even buses or trains, are used to transport the abalone to Gauteng (Hübschle 2010: 57; Nini 2013: 62). To be on the safe side, the truck driver is occasionally accompanied by a “pilot” driving ahead of the truck, ensuring that the route taken is free of police blocks. When the truck reaches its destination, it is parked in a pre-arranged public area, such as a shopping complex, where gang members waiting in a restaurant are later joined by middlemen or a storage manager to negotiate the exchange price (Hübschle 2010: 57). Once the deal is struck, the middlemen or storage manager drive the truck away to offload the abalone, though not without engaging in various ploys and dummy runs to throw off any suspicious-looking trailing police vehicles. These manoeuvres are repeated after the abalone is offloaded and the truck is driven back and handed over to be returned to the Cape (Hübschle 2010: 57). It is precisely at this stage of the supply chain that the price paid for the abalone soars. Whereas divers may get as little as R300 per kilogram for their efforts, the traffickers charge up to R4,500 a kilogram on the South African black market, with the end user in Hong Kong and mainland China paying nearly three times as much again. The severe impact this illegal trade has on the South African economy, and particularly on the survival of the *H. midae* species, is alarming. TRAFFIC, the wildlife trade monitoring network, estimates that the illegal harvest for 2012 alone was 1,542 tons (cited in Reuters 2014: 1).

10.7 Arrests and the criminal process

The chances of offenders getting caught are small—between 5 and 10%—and many of the poachers arrested are repeat offenders (Brill 2012: 32). Whereas the poachers themselves are seldom caught by the police, the middlemen are more vulnerable, especially when transporting the shucked abalone on national highways. Arrests are usually not the culmination of pre-planned and well-orchestrated police action, but more typically in response to a tip-off, or a result of routine police patrols and roadblocks.

A person arrested for an abalone-related crime, which is a scheduled offence, may not be granted pre-trial police bail. The first opportunity such a person has to apply for bail is when the case goes to court. The Constitution gives every arrested person the right “to be released from detention if the interests of justice permit, subject to reasonable conditions” (Sec 25 (1) (f)). The onus is on the state to prove that it is not in the interests of justice for the accused to be released on bail. Bail will be denied if the state can prove, for example, that the accused is likely to evade trial if released on bail, or will interfere with witnesses or conceal or destroy evidence.

In practice, the magistrates’ courts, which are the courts of the first appearance in all criminal cases, usually grant bail to persons charged with abalone-related crimes. The bail amount varies between R5, 000 and R15, 000; there is no discernible correlation between the bail level and the value of the abalone found in the possession of the accused. In fixing the bail amount, courts are guided by the actual financial circumstances of the accused, especially when not defended by a lawyer (*S vs Mohamed* 1977 (2) SA 531 (A)). The general basic standard that the courts use is to set bail at an amount that the accused can afford to pay and that would make it more worthwhile to stand trial than to flee and forfeit the bail (*S vs Du Plessis* 1957 (4) SA 463 (W)). But this guideline does not always work in practice: in one major abalone smuggling case that had been running for six years, an accused who had been released on bail for R500, 000 in cash and with over R2 million property and vehicle confiscated, was permitted by the Cape High Court to travel to China to celebrate the Chinese New Year, but never returned. One of his co-accused, who was out on a R100, 000 bail, is also suspected of having skipped the country (Dolley 2013: 15).

10.8 The abalone court

In 2003, the Ministries of Justice and Environmental Affairs jointly established the first dedicated environmental court in Hermanus, a coastal town on the southwest shoreline. Although it was meant to deal with marine offenders in general, it was intended mainly to prosecute abalone poachers, most of whom live in neighbouring fishing communities. During its brief existence, which lasted only three years, the Hermanus court achieved remarkable results, increasing the convictions for poaching from 70% in the first year to 85% during the court’s final year. In total, the court sentenced 49 people to imprisonment for poaching-related offences and a great many others to non-custodial sentences (Afrol News 2004: 2). Prior to the court’s existence, the conviction rate was about 10% (Snijman 2005: 3), with cases taking up to two years to wind up. The court’s sting was the regional powers it enjoyed, which meant it not only had jurisdiction over all environmental crimes committed in the Western Cape but more importantly, as a regional magistrates’ court, it could impose stiffer sentences than ordinary district courts. Presumably, the deterrent punishments that the court imposed chased the poachers further north up the east coast, which led to the assignment of a special environmental prosecutor who set up an

office in the Port Elizabeth District Magistrates' Court, albeit with a more limited jurisdiction and lesser sentencing powers than the Hermanus court. In 2005, the combined environmental prosecution rate of both courts was 90% (Rogers 2005: 4).

The government did not provide any public reasons for closing the courts. Some writers speculate that it was because of insufficient funding and a lack of policy continuity (Raemakers et al. 2011: 11). The enthusiastic support for the environmental court shown by the Ministers of Justice and Environmental Affairs dissipated when their respective successors assumed office. The lack of political will to sustain the project spelt its demise. Instead, the new Minister of Justice squandered much of her energy in a futile attempt to ward off the National Director of Prosecutions' attempts to prosecute the Commissioner of Police and then the Head of Interpol, Jackie Selebi, who was ultimately convicted for corruption and sentenced to 15 years' imprisonment.

10.9 Consequences of the abolition of the environmental courts

The unexpected end of the environmental courts destroyed the investigative and prosecutorial pool of expertise that had started to develop with regard to the investigation and prosecution of abalone-related crimes. For example, one of the reasons for the previous low conviction rate was the inept handling of the confiscated abalone prior to its identification by an expert. The prosecutor at the Environmental Court in Hermanus, together with Marine and Coastal Management officials, devised a tamper-proof seal, using specially manufactured bags, to secure the integrity of court exhibits. All officials had detailed instructions on how to draw up an exhibit register, documenting each step of the process: from the confiscation of the abalone to its identification and the ultimate disposal of the exhibits. This method had the effect of quickening criminal trials, as experts were not required to give oral evidence in court; instead their evidence could be given by way of an affidavit, as provided for by Section 212 of the Criminal Procedure Act (51 of 1977).

This expertise was dissipated with the closure of the environmental courts, which means that there is no longer a uniform standard applied in the investigation and prosecution of abalone cases. The closure of the environmental courts also blunted the deterrent effect they had on potential abalone poachers. Unsurprisingly, where abalone-related offences had decreased during the existence of the environmental courts, poaching increased rapidly when the courts' funding ended in 2005. To compound the problem, in 2005 the Department of Environmental Affairs and Tourism did two things: (a) it halted the operation known as MARINES (Management Action for Resources of Inshore and Nearshore Environments), which coordinated municipal marine conservationist groups tasked with combating illegal commercial poaching at a local level; and (b) it suspended all investigations into the Chinese Triads' illegal activities, as well as those of other prominent gangs plying their illicit trade in abalone, effectively giving them carte blanche to operate without fear of interference (Brill 2012: 32). Small wonder that the estimated amount of abalone harvested illegally in South Africa increased from 4-500,000 units in 2003/04 to one million in 2005/06 (Hauck 2009b: 6). Estimated traded volumes of illegally harvested abalone have grown steadily since 2008; by 2016, the estimated mass of illegally harvested abalone reached 3,224 tonnes, which equates to over 9.5 million animals poached in 2016—the highest annual figure for the 2000 to 2016 period (Evans 2018: 1).

10.10 Lack of reliable criminal justice statistics

Statistics concerning arrests, investigations, prosecutions and court outcomes of abalone-related criminal cases are bewilderingly deficient. First, it is almost impossible to establish what percentage of those arrested for abalone-related crime are in fact prosecuted, and of these, what percentage are ultimately acquitted or convicted. The problem lies in the fact that the police, the National Prosecution Authority (NPA) and the Department of Justice all keep separate catalogues of statistics. The figures are thus fragmented and cannot be correlated with each other. Based on the annual reports of both the South African Police Service (SAPS) and the NPA, it is impossible to correlate the arrests made for abalone-related offences with the courts' eventual decisions on these cases – or, indeed, if the cases reach the courts at all. One reason for this is that the annual statistics published by the SAPS do not indicate what percentage of the people arrested for each category of crime are referred to the NPA for prosecution. For example, in the SAPS Annual Report for the period 1 April 2013 to 31 March 2014, abalone poaching, which falls under the sub-category “endangered species”, is grouped with other serious crimes, under the overarching category “serious organised crimes” (SAPS Annual Report 2013/2014 Part B at 172). The report states that in the 2013/2014 period, the police arrested 1,218 persons for serious crimes, 828 of whom were convicted. It states further, under the sub-category “endangered species, which includes abalone and rhino poaching and the illegal possession of/dealing in elephant ivory and cycads”, only five people were arrested for rhino poaching and none for abalone poaching. Yet the statistics do not mention whether the five arrested for rhino poaching were among the 828 convicted. It is clear that in order to address transnational organised crime, good information systems are required, as well as monitoring and evaluation systems to indicate impact and results. Specific recommendations will be made below in this respect.

10.11 Apathy and lack of coordination among the responsible government departments

Since the 1990s, the government ministries that make up the criminal justice cluster have repeatedly announced that they have identified the fight against abalone poaching as a major national priority. But it is one thing to identify something, quite another to do something about it. At no other time has the variance between talk and action been more clearly manifested than at a 2009 meeting called by the Standing Committee on Public Accounts to hear what the Department of Environmental Affairs and Tourism (DEAT) was doing in respect of fighting the poaching of abalone. Other government departments who are required to work in tandem with DEAT were also represented at the meeting, namely, SAPS, the Department of Justice, the NPA, and South African Revenue Services (SARS) (Chen & Lovell 2014: 75).

The departmental representatives admitted that no coherent policy on combating abalone poaching exists, acknowledging that their efforts were fragmented and disjointed, with one department not knowing what the other was doing. Although the departments had entered into voluntary cooperation agreements in relation to a common approach on abalone-related crimes, there was no effective way of enforcing them, given the fact that the various departments were guided by their own respective laws. Political party delegates at the meeting decried the demise of the successful environmental courts, particularly since none of the departmental delegates knew why the courts had been shut down in the first place.

The phraseology used in the departmental presentations, too, was tactful and guarded, connoting a sense of evasiveness and inaction with the respect to the challenges they faced. For example, the Department of Justice mentioned that its duty included “disposing of cases as far as possible”, and that it “facilitated the sentencing and fine options” as well “monitoring the conviction rates and the number of cases withdrawn”. The police stated that they “had an organised crime programme in place and a number of crime syndicates had been identified”. The Department of Environmental Affairs and Tourism said that “there was a lack of coordination between the various stakeholders”, that “changes were required to the Criminal Procedure Act”, and that the Department faced the challenge of “the development of skills and a lack of funding to effectively control marine resources” and hoped for the “reinstatement of the environmental court” (Chen & Lovell 2014: 62).

In sum, the 2009 meeting showed unequivocally, in the words of one political party member, that abalone poaching “had been considered a national priority but only on paper” and that the departments concerned with this issue “had been talking past each other and not with each other.”

10.12 How the criminal justice system presently deals with abalone poaching as a transnational organised crime

The criminal justice response to abalone poaching needs to be understood in the light of the transformation that took place in the criminal justice system with the advent of democracy in 1994. When it came to power, the ANC Government prioritised the revamping of all the structures administering justice, which had alienated the majority of the population under Apartheid. The police were foremost in line for a change. First, the military ranks in the police establishment were abolished and the appellation “South African Police Force” was restyled as the “South African Police Services”. The prisons service, too, were demilitarised and renamed the “Department of Correctional Services”. Due to the notoriety that had come to be associated with the title “Attorney General”, this role was renamed “Director of Public Prosecutions”, designating the regional head of the prosecution service, which falls under the National Prosecuting Authority headed by a National Director of Public Prosecutions (Chen & Lovell 2014: 67).

Reform proposals, coming mainly from criminologists and police chiefs in the UK and the US, with competing ideas on what policing should look like in a democracy, centred mainly on converting the widely mistrusted Apartheid-permeated police officers into citizens in uniform, imbued with respect for human rights, working in co-operation with the public, and responsive to the needs of the community. There were even suggestions that some of the self-ordering community structures that had sprung up in black townships in defiance of Apartheid-style policing, such as street committees, people’s courts and self-defence units, could be developed to become alternative, credible, community-owned policing entities in which the state police would serve and not dominate (Waddington 1996: 2).

Some of the reform proposals resonated with the newly-established police authorities and were consequently implemented, but without proper prior consultation with two key constituencies, namely, the rank-and-file police officers and the very communities in which the police would work. What the new, post-Apartheid police management overlooked was that there was little point in transforming the behaviour of the police without taking a hard look at the recruitment selection criteria and the actual content of police training. The fact of the matter is that under the previous order, the police had grown accustomed to taking criminal cases to court based on physically coerced confessions rather than on the strength of a forensic investigation. As a consequence, there is a disturbing shortage of detective skills within the South African police which, in turn, results in many crimes being either not investigated or poorly investigated. In April 2013 the Parliamentary Portfolio Committee on Policing established that a quarter of the country’s police stations were run by unqualified station

commanders and that 80% of South Africa's detectives were trained in only basic criminal investigatory techniques. The detective service's detection rate for more than a million serious crimes reported in that year was only 56.5%, of which only 17.5% were ready for trial (Davies 2013: 13). Hübschle (2011: 7) states that

[w]hile the links between abalone poaching and other facets of South Africa's illegal wildlife trade have not been explored in detail, it is almost certain that they exist. Rhino and elephant poaching have received extensive coverage in recent years, catapulted to the front of the public conservation agenda by prominent press coverage and emotive campaigning by environmental groups, but a much wider range of local wildlife products—including cycads and rare succulents, lion bones, animal hides, live game, shark fins and sea cucumbers—is traded on the black market.

TRAFFIC's 2012 comprehensive report on the illegal rhino horn trade found evidence proving that rhino trading networks have links with other highly lucrative natural resource product trades, including abalone. The report claims, citing criminological research by Hübschle and others, that

[d]etails, however, are thin. Transnational, Asian-run syndicates reportedly control the trade, which operates predominantly out of Vietnam. These syndicates are also known to be involved in other high-risk criminal activities such as drug and diamond smuggling, vehicle theft, armed robberies and ATM bombings. (Chen & Lovell 2013:45)

Anecdotal reports from the Eastern Cape suggest a degree of overlap between abalone poaching and other wildlife crime, with known abalone syndicates reportedly involved in the illegal rhino, cycad and parrot trades as well. In the Western Cape, meanwhile, stakeholders in the West Coast rock lobster industry have claimed that a Chinese national, whose name has been purposefully excluded from this report, but who is accused of running a major abalone syndicate, formerly operated a suspected illegal lobster export business, suggesting possible linkages between the illicit trade of these two species (Chen & Lovell 2013: 8).

10.13 Towards addressing Transactional Organised Crime: Recommendations and the way forward

The International Monetary Fund notes that South African authorities have an understanding of the money laundering risks the country faces (IMF 2015: 51). This is based on the perception that corruption, fraud and organised crime generate criminal proceeds. It follows, therefore, that abalone poaching, as a significant part of the organised crime in South Africa, contributes to money laundering. Statistics show that abalone poaching in South Africa has risen steadily since 2008: in 2016, poachers stole 7 million abalones, up from 4 million in 2008 (Platt 2016: 1). Despite South Africa's attempts to prevent the illegal harvesting of abalone, the vice keeps soaring. There are a number of environmental laws, such as the Prevention of Organised Crimes Act (POCA), as well as regional and international treaties that should, in theory, create a tough environment for poachers. Therefore, the ongoing increase in poaching is indicative that the challenge lies on other fronts than the legislative framework.

Although the object of law enforcement is to punish crime, it is prudent to use a preventive infrastructure that deals with money laundering, while at the same time ensuring the prosecution of the culprits. The 2015 IMF Report advocates for criminalising predicate activities; creating an investigative structure to enhance detection and the provision of forensic analysis by financial intelligence units; and the use of asset tracking to ensure the tracing, seizure and confiscation of proceeds through civil law action and prosecution and punishment (POCA Act 121 of 1998).

As a practical application closely related to the above, successfully prosecuting the money laundering of the proceeds of abalone poaching requires an understanding that abalone poaching shares certain characteristics with white-collar crime. This kind of crime relies on a number of players to thrive. All the way from the crime syndicates to the poacher, we find a long line of players who have a role in the vice. At the bottom of the chain is the poacher or angler who is directly engaged in obtaining the abalone, and is at risk of arrest by law enforcement officers. He is the most dispensable in the chain, in desperate need of money yet getting very little for his input. This player is the sacrificial lamb, who pays the price if caught. Closely following are the various intermediaries, who collect the abalone and send it to the prospective buyers. The main challenge is that these buyers are shrouded in mystery, and often reside far outside the jurisdiction where the initial crime takes place. The caution that the intermediaries exercise is premised on allegiance to the group they operate within (Vy Le 2012:121). The intermediaries and the higher enclaves of organised gangs also deal in drugs, which gives them capital to enhance the poaching.

It is significant to note that corruption buttresses this complex structure and supports its continued existence. According to a pilot survey of organised criminal groups by the UN Office on Drugs and Crime, corruption is a "key element for the undertaking of organised crime activities and ... three-quarters of the groups use corruption occasionally or regularly." The propensity of criminal syndicates to offer bribes to anyone who stands in their way is well known (Lambrechts & Goga 2016: 43). Bribes are used to encourage the responsible agents to

ignore those involved in illegal activities (Muchapondwa, Kerri & Visser 2012: 7). It is recommended that to reduce organised crime to minimal levels, anti-corruption measures must be adopted by all stakeholders in the justice system.

There is a well-documented connection between drug use, white-collar crime and abalone poaching in the Southern African Development Community (SADC) (Chen & Lovell 2014:81). These three crimes form the basis of money laundering. The fight against money laundering requires international cooperation on tracing the movements of illegally acquired resources. As pointed out at the beginning of this chapter, this challenge is especially important for the African Union (AU) to support its objective of an African renaissance. It is recommended that the AU gives specific attention to abalone poaching as part of its anti-corruption and transnational crime agenda. There needs to be a concerted collaborative intergovernmental effort across the SADC region and beyond to buttress the already existing treaties on abalone poaching with concrete action on the ground. Prosecution of crime syndicates who operate within the region should be possible in instances where the crime is committed outside the geographical jurisdiction of any of the SADC countries. As pointed out earlier, in order to address transnational crime, it is important to have access to reliable information management systems that will support the monitoring and evaluation process, ensuring that results and impacts are measured and acted upon, providing an important basis for evidence-based decision making at the regional, continent-wide and global levels.

10.14 Conclusion

This study examined the nature of transnational organised crimes and their socioeconomic consequences on a regional, national and international level. In particular, it focused on the South African context and, amongst the multiplicity of illicit maritime economic activities, examined abalone poaching as a way of highlighting the serious sociological consequences of maritime crime.

Following from the discussion above, the following recommendations can be drawn:

- International/intergovernmental relations and cooperation throughout SADC, the AU and beyond need to be improved in order to coordinate the fight against TOC.
- The reduction of organised crime to minimal levels can be facilitated through the implementation of anti-corruption measures across the criminal justice system.
- The AU should pay specific attention to abalone poaching as part of its agenda to address corruption and transnational crime.
- There is a marked dearth of usable comprehensive statistical documentation at every stage of the criminal justice process. Reliable information management systems are needed so that the arrest, prosecution and penalisation of criminals at every level of the trafficking chain can be monitored and evaluated, in order to measure the results and impacts of all tactics, allowing evidence-based improvements to be made.

It can be concluded that the crucial partnership between escalating enforcement and the simultaneous implementation of a more equitable fishing regime did not come to pass (Steinberg 2005: 15). The negotiation of extradition treaties with countries that are home to crime syndicates can help ensure that their leaders face the law. This will aid the investigation of organised crime and money laundering, with direct implications for the crime of abalone poaching. South Africa understands the economics of crime syndicates, and dealing with them will aid its fight.

There is an urgent need for stronger international partnerships and cooperation in order to address transnational crime. The need to control trafficking beyond individual countries' borders has motivated the recent decision to list abalone in Appendix III of CITIS (the Convention on International Trade in Endangered Species of Wild Fauna and Flora), a step which will provide much better control in the international abalone trade by forcing other countries to join in the task of monitoring the trade in abalone. Without this, South Africa would not automatically receive assistance from other countries in fighting illegal abalone poaching (Raemaekers et al. 2013: 5).

Notwithstanding the considerable challenges faced in policing and prosecuting abalone poaching, several key interventions have been proposed over the years (TRAFFIC report 2014: 23-24). There remains a powerful need to enhance co-operation among the South African criminal justice authorities and other governmental agencies responsible for fisheries and environmental conservation and sustenance.

Calls for radical governance reform have been made, but change is slow; the challenge is to rebuild the abalone fishery for the benefit of coastal communities, the major challenge will be the creation of the required public sector developmental capacity to support the various implementation processes. (Greef & Raemaekers 2014: 3)

Nevertheless, it is vital that the full extent of the poaching should be uncovered for the purposes of combating this menace and other forms of wildlife crime more effectively in the future.

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